

## **Some Issues for Educators in Ariz. Immigration Case**

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The U.S. Supreme Court on Wednesday takes up the legal challenge to Arizona's tough immigration law. While the Arizona measure does not have requirements for schools to check the immigration status of students, as Alabama's law does, the debate over the law has been watched closely by educators in the state and nationally.

And the high court's decision in *Arizona v. United States* (Case No. 11-182) would likely have implications for Alabama's law and any others with more-direct school provisions, since the key issue is whether the states are treading into an area of law that is pre-empted by federal immigration enforcement.

My colleague Lesli A. Maxwell was in Alabama last week to report a story on that state's immigration law, and she's posted her initial thoughts in her *Learning the Language* blog.

The state of Arizona itself, in its main brief in its appeal of a federal court ruling that blocked the law known as SB 1070 from taking effect, raises the issue of the education of undocumented immigrants.

"The fiscal and economic effects of illegal immigration and unauthorized work by aliens in Arizona ... are severe," says the merits brief for the state written by Washington lawyer Paul D. Clement. "Arizona spends several hundred million dollars each year incarcerating criminal aliens and providing education and health care to aliens unlawfully present in the state, with local governments spending many millions more."

Four provisions of SB 1070 are at issue. One requires a police officer who makes a stop or an arrest of an individual to determine that person's immigration status if the officer has "reasonable suspicion" of illegality. Another provision makes it a crime under Arizona law for a person to intentionally fail to obtain and carry legal immigration papers while in the state. The third makes it a misdemeanor for an undocumented alien to work or apply for a job in the state. And the fourth allows police to detain without a warrant any person the officer reasonably believes has committed a crime that would subject him or her to deportation.

Clement will go head to head April 25 against U.S. Solicitor General Donald B. Verrilli Jr., with whom he clashed last month in the historic Supreme Court arguments over the Affordable Care Act, President Barack Obama's signature health-care law.

Verrilli argues in the Obama administration's main brief that with SB 1070, "Arizona has adopted its own immigration policy, which focuses solely on maximum enforcement and pays no heed to the multifaceted judgments that the [Immigration and Nationality Act] provides for the executive branch to make. For each state, and each locality, to set its own immigration policy in that fashion would wholly subvert Congress's goal: a single, national approach."

I won't go into all the arguments over the Arizona law here. But one irony is that the solicitor general found no reason in his brief to cite the Supreme Court's 1982 decision in *Plyler v. Doe*. In that Texas case, the high court held that a state may not deny access to a basic public education to any child, whether that child is present in the country legally or not. (The administration has cited *Plyler* in its legal arguments against Alabama's immigration law and its school provisions.)

Meanwhile, Clement, in his brief for Arizona, found language in *Plyler* that he believes helps his argument that the state's immigration law is congruent with federal law.

"This court in *Plyler v. Doe* ... recognized that the states possess 'authority to act with respect to illegal aliens, at least where such action mirrors federal objectives and furthers a legitimate state goal,' " Clement's brief says, quoting the majority opinion in *Plyler* by Justice William J. Brennan Jr. "The *Plyler* court squarely rejected the notion that the states are powerless to deal with the problems caused by illegal aliens: 'Despite the exclusive federal control of this nation's borders, we cannot conclude that the states are without any power to deter the influx of persons entering the United States against federal law, and whose numbers might have a discernible impact on traditional state concerns.' " Another curiosity in the Arizona case before the Supreme Court is that despite the filing of numerous friend-of-the-court briefs on both sides, with scores of signatory groups to each, major education groups did not join any of the briefs, including organizations that often file such briefs in the high court, such as the National School Boards Association and the National Education Association.

The most education-centric brief in the case comes from the National Council of La Raza and a handful of other major Latino organizations, on the side of the United States.

"Lifting the injunction will have a profound chilling effect on the ability of many Latino children to obtain an education," the La Raza brief says. "Should the enjoined provisions of SB 1070 be allowed to take effect, many Latino families in Arizona will live under an increased fear that teachers, school administrators, and police officers will be compelled to report information to the government that will call into question the immigration status of students and their families."

The brief argues that even without an Alabama-style requirement that schools inquire about the citizenship status of students, "public schools in Arizona are required to document the residence and educational history of each new student. Latino students who are (or who have family members who are) undocumented or otherwise 'removable from the United States' will fear incurring inquiries or penalties under the enjoined provisions when they provide required enrollment information."

The groups also fear that police officers assigned to schools might feel compelled or be required to carry out SB 1070's enforcement provisions. And the Arizona law, they say, had a chilling effect that prompted parents of undocumented children to remove them from schools. That, along with a similar effect in

Alabama, prompted the Obama administration to send a "dear colleague" letter to schools reminding them of their obligations under Plyler v. Doe and other legal authorities to enroll children regardless of their citizenship or immigration status.

- Mark Walsh